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And Larry B. Litton, Jr.

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF OREGON (PORTLAND)**

MDF LANDCO, INC., WILLIAM E.  
MANDERFIELD & ELANA M.  
MANDERFIELD, et al.

Plaintiffs,

v.

LARRY B. LITTON, JR., President and Chief  
Executive Officer of LITTON LOAN  
SERVICING LP; COMMUNITY LENDING,  
INCORPORATED; R.K. ARNOLD,  
President of MORTGAGE ELECTRONIC  
REGISTRATION SYSTEM, INC.; and  
GREG FOWLER, President, US FUNDING  
GROUP, INC.

Defendants.

ERIC HOLDER, US Attorney General, as  
Alien Property Custodian; TIMOTHY  
GEITHNER, US Secretary of the Treasury,  
United States of America

Third Party Defendants

Case No. 09-CV-1235-BR

**DEFENDANT LARRY B. LITTON, JR.'S  
MOTION TO DISMISS**

**CERTIFICATION PURSUANT TO LR 7.1**

Pursuant to LR 7.1, the undersigned counsel for Defendant Larry B. Litton, Jr. hereby certifies that he made a good faith effort to confer with plaintiffs regarding this Motion. On November 28, 2009 defense counsel emailed plaintiffs regarding his intention to file this Motion to Dismiss. On other occasions defense counsel has left voice mail messages with Plaintiffs. Plaintiffs have failed to respond to any of these email or telephone messages.

**MOTION**

Defendant Larry B. Litton, Jr. ("Mr. Litton") moves the Court, pursuant to Rules 12(b)(1), 12(b)(2), 12(b)(5), and 12(b)(6) of the Federal Rules of Civil Procedure, for an order dismissing with prejudice the Complaint brought by plaintiffs William E. Manderfield and Elana M. Manderfield ("plaintiffs")<sup>1</sup> against Mr. Litton due to lack of standing, lack of personal jurisdiction, insufficiency of service of process, and for failure to state a claim. In support of this Motion, Mr. Litton relies upon the accompanying Memorandum of Law and the Declaration of Larry B. Litton, Jr., all electronically filed contemporaneously herewith. As further grounds, Mr. Litton states:

First, the Court does not have personal jurisdiction over Mr. Litton. Mr. Litton was not personally involved in any aspect of plaintiffs' loan, including the origination of the loan or the servicing of the loan. At no time did Mr. Litton personally have a conversation with either plaintiff or personally send correspondence to either plaintiff. In short, Mr. Litton has had no personal contacts with plaintiffs in Oregon or anywhere else. Without more, the Court does not

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<sup>1</sup> Plaintiffs also refer to themselves as "William-Edwin: Manderfield" and "Elana-Marie: Manderfield" and have named "MDF Landco" as a party in the caption of the Complaint. Plaintiffs do not identify MDF Landco as a party in the body of the Complaint nor do they make reference to it anywhere else in the Complaint. To the extent MDF Landco is a party, the Court does not have personal jurisdiction over Mr. Litton for the reasons set forth in the accompanying memorandum of law, and MDF Landco has not stated a claim for the reasons the Manderfields have failed to state a claim.

have personal jurisdiction over Mr. Litton, a Texas resident, and should dismiss the matter against him pursuant to Fed. R. Civ. P. 12(b)(2).

Second, because Mr. Litton is not subject to personal jurisdiction in the courts of the State of Oregon, the attempt to effect service of process on Mr. Litton in the State of Texas was beyond the territorial limits of effective service prescribed by Fed. R. Civ. P. 4(k), and the action against Mr. Litton must be dismissed under Fed. R. Civ. P. 12(b)(5) for insufficiency of service of process.

Third, the allegations of the Complaint are insufficient to establish that plaintiffs have standing to pursue their claims against Mr. Litton. Because the Complaint is devoid of allegations that plaintiffs have suffered an injury that is fairly traceable to any purported actions or omissions of Mr. Litton, the Court should dismiss the matter against Mr. Litton pursuant to Fed. R. Civ. P. 12(b)(1).

Fourth, the Complaint fails to state a claim against Mr. Litton pursuant to Fed. R. Civ. P. 12(b)(6). Other than being named in the caption of the case, Mr. Litton is not identified in any other place in the Complaint. Nowhere does the Complaint allege a single act of wrongdoing on the part of Mr. Litton. Under recent Supreme Court precedent reiterating the threshold pleading requirements of Rule 8, this type of generic pleading is not enough to survive a motion to dismiss because the Complaint does not allege any conduct on the part of Mr. Litton that could form the basis of plaintiffs' purported claims.

Mr. Litton's motion is supported by the documents already on file with the Court, the memorandum filed herewith, and the Declaration of Larry B. Litton, Jr. filed herewith.

Dated this 14th day of December, 2009.

K&L GATES, LLP

By s/Philip Van Der Weele  
Philip S. Van Der Weele, OSB #863650  
Attorneys for Defendants Litton Loan  
Servicing LP and Larry B. Litton, Jr.

**CERTIFICATE OF SERVICE**

I hereby certify that on this 14th day of December, 2009, I served a copy of the foregoing DEFENDANT LARRY B. LITTON, JR.'S MOTION TO DISMISS upon the following parties by United States First Class mail, postage prepaid:

William E. Manderfield Elana M. Manderfield 3021 NE 72nd Dr. #9-190 Vancouver, WA 98661	MDF LANDCO, Inc. 3021 NE 72nd Dr. #9-190 Vancouver, WA 98661
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DATED this 14th day of December, 2009.

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s/Philip Van Der Weele  
Philip S. Van Der Weele